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April 17, 2020

Judge Valerie E. Caproni
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

MEMO ENDORSED

RE: United States v. Brian Maynor, 15 Cr. 537 (VEC)

Dear Judge Caproni:

We are counsel to defendant Brian Maynor in the above-captioned matter, and respectfully submit this request for a remote, telephonic appearance before Your Honor on Tuesday, April 21, 2020 or as soon as the Court has availability. The purpose of this appearance will be: (1) to seek vacatur of Mr. Maynor's conviction pursuant to *United States v. Davis*, 139 S.Ct. 2319, as his sole conviction for violating Title 18, United States Code, Section 924(c) is predicated on a racketeering conspiracy, which is not a "crime of violence" under *Davis*; (2) to allow Mr. Maynor to plead guilty to a superseding Information and plea agreement; and (3) to proceed to sentencing since Mr. Maynor faces a sentence of time served, is presently incarcerated, and is scheduled to be released from prison in less than two weeks. The Government consents to this request.

As background, the Government and I have been in discussions regarding a resolution of Mr. Maynor's case for the last few weeks, the timing of which has been impacted by the recent COVID epidemic. I received the final plea agreement and Information from the Government on April 15, sent them to Mr. Maynor, and communicated with him about them yesterday. Mr. Maynor presently is incarcerated at FCI Allenwood, having served approximately 48 months in federal custody in connection with these charges. Mr. Maynor was supposed to be sent to a halfway house last week, but is now being held at this institution in the Special Housing Unit ("SHU") for a BOP-imposed quarantine due to COVID. He is now scheduled to be released to a halfway house on April 29.

Under the terms of the parties' plea agreement, Mr. Maynor's sentencing range under the United States Sentencing Guidelines is 24 to 30 months—which would amount to time served. I

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will advocate for this sentence, and understand the Government will also request a Guidelines sentence of time served. I have conferred with my client and the Government, each of whom consents to waiving the Pre-Sentence Investigation Report, to conducting this proceeding remotely, and to having the proceeding encompass the vacatur, plea, and sentencing. Given the exigencies posed by the COVID epidemic, the joint request to vacate my client's conviction under *Davis*, and the sentence of time served that my client now faces, I respectfully request that the Court schedule this proceeding remotely and at its earliest convenience. I understand from speaking with BOP officials that FCI Allenwood could accommodate such a proceeding on Tuesday, April 21. In addition, the Government and I both understand that Mr. Maynor will immediately be released from FCI Allenwood if a sentence of time served is imposed.

In the event the Court cannot accommodate my request to conduct the vacatur, plea, and sentencing proceeding on the same day, then I respectfully request the opportunity for a remote appearance to address my application for vacatur. If my application is granted, I will then seek my client's release on his own recognizance, pending a date at which we can schedule the plea and sentencing.

Respectfully Submitted,

/s/Christopher LaVigne
Christopher LaVigne

A telephonic hearing is hereby scheduled for **April 21, 2020, at 10:00 A.M.** All parties must appear for the conference by dialing 1-888-363-4749, using the access code 3121171 and the security code 0537. FCI Allenwood is directed to produce Mr. Maynor for his telephonic appearance.

The Government is requested to email the proposed plea agreement and superseding information to chambers by **3:00 P.M. on April 20, 2020.**

SO ORDERED.

Date: 04/17/2020



HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE